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DIVERSITY OF BUSINESS IN A CORPORATE CHARTER.

The bankruptcy statute, in restricting its operation to corporations engaged "principally" in certain pursuits, gives rise both to questions of interpretation of state policy in allowing a business corporation to be chartered for diverse purposes and the wisdom thereof.

More directly does this suggestion come from the decision in the case of In re Humphrey Advertising Co., 177 Fed. 187, decided by the Circuit Court of Appeals, Seventh Circuit. The selection or naming of the pursuits in which a corporation is to be principally engaged, so as to bring it within the scope of the bankruptcy statute, may be regarded as arbitrary, but, nevertheless, the statute proceeds upon the very natural assumption that every corporation is organized for one main or principal purpose, and whatever power is given outside of that is incidental.

The Humphrey Advertising Company was endowed with a charter specifying as follows: "Publishing, distributing and placing advertising matter in railroad cars * * * * and the allowing and placing and operating vending machines and other self-acting mechanical devices."

The court appeared to regard the business of "publishing" as one business and the doing of the other things as another, and that it was principally engaged in the other things which did not make it subject to involuntary bankruptcy.

We do not think this a fair construction of the charter, because the word "publishing" has, from its association, a restricted meaning, and though it may be true, as the court states, that Illinois statutes allow corporations to be created for more than one corporate object, a charter should be very specific to accomplish this.

But the meaning of this particular charter is here but casually referred to, as our purpose is not to discuss this decision, but what it suggests.

Ordinary statutes for the creation of corporations divide them into classes. For example, there are those not for private gain and those for that purpose. In the former no shares of stock are issued, while interest in the latter is only thus possessed.

Then there are corporations which are purely private, and those affected by a public interest. The one sort are subdivided, in classification, and different liabilities may attach to the ownership of stock in some than in others. This is exemplified by reference to stock held in a bank, and that in a manufacturing or mercantile company.

Stock corporations are also subdivided, and their subjection to regulation and their rights of eminent domain may present many reasons why the mingling of objects in one charter might be contrary to public policy.

This would be especially true should quasi-public corporations embrace in their charter objects of a purely private nature, thus creating confusion in the exercise of their rights and the performance of their duties, and putting them under temptation to pervert public benefits to the advancement of private gain.

Less seriously perhaps, would be the result of mingling objects of a private nature, but wholly heterogeneous. Nevertheless classification of these things implies that they should be kept separate. To give a banking institution the right to carry on a mercantile business would certainly tend to make abortive regulations for the security of its depositors. And to allow an insurance company to go into manufacture, with its perils of loss, would endanger the stability of any reserve required to be kept and

make its distribution, in receivership, attended with uncertainty.

Coming down the line, let us suppose the uniting of several business objects under one charter, for example the carrying on of so many kinds of business as to create, not possibly a monopoly, but a serious hindrance to that free competition necessary for the substantial prosperity of a community.

Business corporations of the most essentially private character are those engaged in mercantile and manufacturing pursuits. One is necessary to the other and, in general aspect, it is better they should be separate. The laws of trade, local conditions and supply and demand may place them in some sort of opposition, each struggling for a fairer field and more unrestricted opportunity. Out of the friction there is generated the zeal of individual effort that advances the general good.

Corporations are formed by the aggregation of capital beyond either the ability of individual accumulation or the willingness of hazard in its employment. But this aggregation should have its limit short of the combining of such multitude of things under one control as may make enterprise top-heavy towards widespread disaster or dominant over the free spirit of competition.

This is a fair subject for state policy, and it is quite conceivable that states might have definite views in limiting the powers of their creatures, because of the fact that they are but the representatives of people in combination. Especially may this be so when these people, as individuals, may not have as citizens any local interest in communities where these creatures operate. Merely a financial interest in a state is no great security for its welfare.

However, there are all sorts of classification and there is regulation pertaining to each class. This shows they are treated under the law separately and the presumption is that it is better they should separately pursue the even tenor of their various ways.

NOTES OF IMPORTANT DECISIONS

TREATIES — THEIR INTER-RELATION THROUGH HIGHLY FAVORED NATION CLAUSES.—In re Ghio's Estate, 108 Pac. 516, decided by Supreme Court of California, recites the names of twenty-three countries, treaties with which and this country contain most highly favored nation clauses. In this case the Consul General of the Kingdom of Italy for California, Nevada, Washington and Alaska Territory claimed, by virtue of such a clause, an alleged right under a provision in a treaty between the United States and the Argentine Republic concluded in July, 1853.

The treaty with Italy was made in 1878, and those with the other countries were from as early as 1826 down to 1902. The opinion of the court says, in effect, that as occasion might arise the question could be raised as well by the consul of any one of these countries as by the Consul General of Italy.

We see, therefore, that the favored nation clause may survey our international horizon eastwardly for a most a century and westwardly to the setting of our national sun. Our whole treaty system is claimed to be interlocked, so to speak, by the favored nation clause, enabling foreign countries to spy into the privileges granted by us to any country and claim them for their own, no matter whether accorded for special reasons or not.

Certain privileges may have been granted to particular countries for valuable consideration personal to the high contracting parties. Or, as granted to a particular country, a different interpretation might be given to language of a concession than otherwise.

This last observation is well illustrated in the case we are considering. The court conceded the right of Italy's Consul General to invoke any pertinent clause of the Argentine treaty, but restricted its effect to that which was presumably given to language by two republics, having similar systems of governments. And this was an important element in construction.

Thus it was claimed that the right given by the Argentine treaty carried into the treaty with Italy, gave its Consul General preference over a public administrator as to the estate of intestate, who at the time of his death was a citizen of Italy. The California court fortified its view, that the United States did not intend to interfere with local administration of the estates of decedents, by arguing that such a Government as the Argentine Republic did not wish to interfere with an autonomy it also cherished.

It is also to be seen from the opinion, that civil and common law terms were placed in apposition and opposition in the endeavor to ascertain what was meant by the treaty words. All of this goes to show, that an omnibus provision like a highly favored nation clause ought to have some restrictiveness about it.

When this country was a weak nation and might have been, for temporary reasons, willing to concede to another what it would not care to concede generally, when it has grown to be powerful, its diplomacy should not forever be fettered. And especially does it seem that highly favored nation clauses should not be of such customary usage as to make their omission from treaties carry a sinister inference. A treaty should contain that which, and only that which, the parties have clearly in mind at the time it is made, and it should not create a search warrant for other benefits. Within the four corners of each treaty should be found all that is contracted for.

WAIVER—MOTION FOR NEW TRIAL RE-ESTABLISHED WHERE MOTION FOR JUDGMENT NON OBSTANTE VEREDICTO WAS WRONGFULLY SUSTAINED.—After holding that the circuit court erred in sustaining a motion by defendant for judgment in its favor notwithstanding a verdict in plaintiff's favor the First Circuit Court of Appeals goes on to say: "But this does not finally dispose of the case. Prior to the judgment for defendant, the defendant had filed one or more draft bills of exception. It also seasonably filed a motion for new trial. A waiver of the latter was made by the defendant, stating that this was in view of the ruling of the court on the defendant's motion for a judgment in its favor. Under the circumstances, justice requires that this waiver should be discharged, and that the bills of exceptions should receive the consideration of the Circuit Court and its action thereon, without being prejudiced by the subsequent occurrences."

The case was therefore remanded to the Circuit Court "with full leave to proceed in any manner not inconsistent with our opinion." Viscount de Valle Costa v. Southern Pac. Co., 176 Fed. 843.

The rule with many courts is that motion for judgment non obstante cannot be made by defendant, but his remedy is by motion in arrest. See Floyd v. Colo. F. & I. Co., 10 Colo. App. 54, 50 Pac. 564; Chicago City R. Co. v. White, 110 Ill. App. 23; Barnes v. Rodgers, 54 S. C. 115, 31 S. E. 885; Stoddard v. Insurance Co., 75 Vt. 253, 54 Atl. 284; but it may be taken for a motion in arrest, if sufficient reason is alleged for arrest. How v. Thomas, 70 Vt. 580.

It has been ruled also, that motion for arrest precludes the making of motion for new trial afterwards. State v. Webb, 53 Kan. 464; Jones v. Foles, 4 Mass. 245; Gerling v. Ins. Co., 39 W. Va. 689.

These rules seem quite rigid, and it seems to us, that defendant should have pressed its motion for new trial to a ruling and have taken a cross-appeal. As it is, a jurisdiction giving, we may say, a larger benefit to defendant by motion for judgment, instead of a motion for arrest, should not have allowed him to thus speculate on the correctness of the ruling of the trial court. We take it, that the effect of a judgment in defendant's favor non obstante could be pleaded as res judicata while the ruling on motion in arrest could not.

CORPORATION—NOTICE TO CREDITOR OF MISAPPROPRIATION OF CORPORATE FUNDS WHERE CHECK IS USED TO PAY OFFICER'S DEBT.—The Supreme Court of New York has lately held, that where the check of a corporation payable to the order of a bank, signed by the corporation's treasurer, is used by its president to pay his debt, the circumstance is so suspicious as to put the bank upon inquiry whether corporate funds are being misappropriated. Lanning v. Trust Co. of America, 122 N. Y. Supp. 485.

This question is somewhat different from that considered by us in our annotation to a decision by the same department in Appellate Division of this court in 70 Cent. L. J. p. 174. There the question was of a corporate officer drawing checks to his own order and depositing same in another bank to his personal account. These checks were held to be notice to the bank crediting same to the officer's personal account that the officer was using corporate funds for his individual benefit.

In the Lanning case the court says: "Does the fact that it (the check) was not signed by (the president) but by another officer, under the facts and circumstances here presented, take the case out of the general rule? I think not. The defendant knew, because it was so informed when it agreed to make the loan to Twining, that the capital stock of the Monmouth Company was $100,000, and it had little or no surplus. The amount of the check, the payee named in it, and the fact that it was being used to pay the personal debt of the president of the corporation was notice to the Trust company, in the absence of any other evidence bearing on the subject of an unauthorized use of the funds. It was payable directly to the Trust Company, and

therefore showed upon its face that Twining had no title or interest in the moneys which it represented."

It is perceived here that the court was cautious and went no further than the necessities of the case before it required, but we think that it could safely have enunciated the principle that such a check was so irregular in its mingling of an officer's personal account with corporate business that such a recipient as the Trust Company would be put upon fullest inquiry.

REMITTITUR IN VERDICTS, WHERE EXCESS IS NOT EXACTLY CALCULABLE.

Introductory.—The tendency of American courts to brush away whatever of obstruction to the end of litigation, there may be, or may be conceived to be, in the way of technicality, or in the principle of the court responding to questions of law and the jury to questions of fact, has its most pronounced exemplification in the employment of what may be called optional remittitur. Remittitur of excess in verdicts that is exactly calculable needs scarcely to be noticed, because no pretense of invasion of the province of the jury could be urged for its non-exercise. The discarding of that from a verdict, which in legal view has never come to the apprehension of the triors of fact, through the lens of evidence, is but to lop-off excrescence from substance. The only illogical step taken by any court (and there seems such sometimes) is to fail to direct it to be lopped-off, if clearly separable, instead of requiring a remittitur nisi. But that it can be taken off in one or the other way, seems practically undisputed, and for this reason we confine our attention to excessive verdicts, for whatever reason they are thus, when the excess is not demonstrably certain.

Subdividing the Subject.—The principle, that a court may deem a verdict excessive, when once admitted, carries the right to regard the source of the excess and its extent. These sources may be: (1) The admission of irrelevant or incompetent evidence; (2) Error in instructions; (3) Over-estimate by the jury, and (4) Improper motive enhancing the amount. These sources or influences, insofar as they contribute to what the court adjudges to be an excessive verdict, to a degree not accurately determinable, I will take up hereinafter in their order.

Invasion of Province of Jury.—The courts which recognize remittitur nisi in the several classes of cases I am considering, deny, that the practice is a substitution of the court's judgment upon questions of fact for that of the jury. In Arkansas Cattle Co. v. Mann,[1] Justice Harlan says: "It cannot be disputed that the court is within the limit of its authority when it sets aside the verdict of the jury and grants a new trial where the damages are palpably or outrageously excessive. * * * The authority of the court to determine whether the damages are excessive implies authority to determine when they are not of that character. To indicate, before passing upon the motion for a new trial, its opinion that the damages are excessive, and to require a plaintiff to submit to a new trial, unless, by remitting a part of the verdict, he removes that objection, certainly does not deprive the defendant of any right, or give *him* any cause for complaint. Notwithstanding such remission, it is still open to him to show, in the court which tried the case, that the plaintiff was not entitled to a verdict in any sum, and to insist, either in that court or in the appellate court, that such errors of law were committed as entitled him to a new trial of the whole case."

In Kennon v. Gilmer,[2] it was said by Justice Gray, the appeal being from the supreme court of a territory, that: "Under these (territorial) statutes, as at common law, the court, upon the hearing of a motion for new trial, may, in the exercise of its judicial discretion, either absolutely deny the motion, or grant a new trial generally, or it may order that a new trial be had unless the plaintiff elects to remit a certain

(1) 130 U. S. 69.
(2) 131 U. S. 22.

part of the verdict, and that, if he does remit, judgment be entered for the rest. * * * But in a case in which damages for a tort are assessed by a jury at an entire sum, no court of law, upon a motion for a new trial for excessive damages and for insufficiency of evidence to support the verdict, is authorized, according to its own estimate of the amount of damages which the plaintiff ought to have recovered, to enter an absolute judgment for any other sum than that assessed by the jury." The case was, therefore, remanded with direction "either to deny or to grant a new trial generally or to order judgment for a sum less than the amount of the verdict, conditional upon a remittitur by the plaintiff."

The Kennon case cites the Mann case and enforces the distinction it recognizes, to-wit: that there is no substitution of the court's judgment for that of the jury, except as to him who consents and as to him who has nothing to complain of.

A recent case from Wisconsin[3] defends with elaborateness and vigor the proposition, that conditioned remittitur is no invasion of the province of the jury in any case of excessive damages, where the excess is no more than an estimate. The opinion, however, does not go as far as what is said in the above cases implies. It does not agree that "it is quite clear that if a trial or appellate court compels a defendant to submit, at the plaintiff's option, to a judgment for less than that named in a verdict, held to be fatally excessive * * * and fails to guard against all reasonable danger of impairment of the former's rights" it does not invade the rights of defendant.

The Wisconsin court deduces a rule as "the only one pursuable, consistent with the principle that the right of jury trial should not be judicially invaded" as follows: The rule "that requires the sum imposed upon the defendant, whether he consents or not, at the option of the plaintiff, to be as small as an unprejudiced jury would probably name; and the sum to be imposed upon the plaintiff, whether he consents or not, giving the option to the defendant, to be as large as an unprejudiced jury on the evidence would probably name."

A concrete application, working both ways, of this rule is found in the same volume in which the Heinlich case is reported.[4] In the Rueping case the decision was upon a second appeal and in two trials grossly excessive verdicts had been rendered, but the trial judge did not require a remittitur and the practice seemed to be, in that state, that the higher court merely affirms or reverses such requirement. Counsel for both parties requested the supreme court to condition the grant of a new trial. Thereupon the court ordered that if counsel for defendant consented in writing within twenty days to a judgment for $5,000, new trial should be denied. If he failed to do this, plaintiff might within thirty days consent to a judgment for $2,500 and avoid a new trial. Other cases are cited hereinafter, which either tacitly assume or expressly assert, that there is no invasion of the right to jury trial.

In a Georgia case[5] the opposing theory is followed as settled law which has passed beyond the domain of discussion, but the doctrine of what is only exactly calculable being deducted does not forbid a still further reduction by consent of the plaintiff. Thus where interest was instructed for erroneously, a higher, than the non-contract, rate was allowed to be deducted, where there was no means of knowing which had been allowed by the jury.[6]

Excess Attributable to Improper Evidence.—In Wisconsin the opinion in Baxter v. R. Co.,[7] proceeding upon the theory that it was established law in that jurisdiction that from excessiveness arising out of passion or prejudice remittitur could be re-

(3) Heinlich v. Tabor, 123 Wis. 565, 102 N. W. 10, 68 L. R. A. 669.

(4) Ruepping v. Chicago, etc., R. Co., 123 Id. 319, 101 N. W. 710.

(5) Seaboard A. L. R. Co. v. Randolph, 129 Ga. 796, 59 S. E. 1110.

(6) Seaboard A. L. R. Co. v. Bishop, 132 Ga. 71, 63 S. E. 1103.

(7) 104 Wis. 307, 80 N. W. 644.

quired nisi says: "There is no good reason to restrict the practice to exclude any case, whether on contract or sounding in tort, where plaintiff is clearly entitled to recover and a sum can be named, which in all reasonable probability will not exceed the amount which a jury will ultimately give him. If the court can name that sum, where the verdict is the result of passion and prejudice so as not to furnish any guide whatever, it certainly can in most cases where the only defect is that an element has been included improperly." In the case a remittitur from $11,500 to $7,000, because of "the error of permitting irrelevant evidence which tended to show a greater degree of disregard for the safety of defendant's employees than it was guilty of, thereby prejudicing the jury against the defendant." There was no claim the verdict was generally excessive, and, thus, there was as pure speculation in making the reduction as could well be imagined. The court said: "In this we do not determine what will adequately compensate plaintiff for his injuries. We simply determine what amount of the $11,500 was probably assessed by the jury for plaintiff's actual injuries, keeping in mind the probable departure by the jury from the legal standard of compensation by reason of prejudicial, irrelevant evidence, and making a proper reduction for that." We venture to say, that verification of such a probability is wholly impossible in any questioning of any jury that ever sat in a case. The principle was applied in a very recent case,[8] and the *rationale* of it is better perceived—that is to say, its appositeness is more apparent. In Amann v. Traction Co.[9] it was held that the evidence in a personal injury case as to future damages should have been excluded as incompetent and the supreme court affirming judgment for balance after remittitur said: "Whether the remittitur required by the trial court would cure errors of this character on a question of actual damages or not, we are satisfied that any jury to whom the evidence in the case might be submitted would assess damages equal to the amount of the judgment. The case was a proper one for the assessment of exemplary damages and in view of that fact we think the judgment should be affirmed."

I cannot say I commend this character of reasoning. It seems about like saying, that the extent of the error will not be inquired into, as on general principles the defendant was rather lucky than otherwise.

Excess Arising Out of Instructions.—It is scarcely needed to cite authority upon this, but as an illustration from a state which is opposed to the principle of remittitur except where the excess is exactly calculable, see Seaboard A. L. R. Co. v. Randolph, *supra*.

Excess in Honest Overestimate.—In Stephenson v. R. Co.[10] the opinion is brief, the court above requiring a remittitur nisi solely upon its view that the damages suffered were only $2,000 instead of $3,641.66. In Alabama the same lattitude of judicial discretion appears to be recognized, and while the court is not under any duty to say more than that a verdict should not stand as rendered because of excessiveness, it should rule whether or not an offer to remit a stated sum should avoid a new trial.[11] In Hall v. R. Co.,[12] the principle of remittitur in tort seems so strongly recognized, that terms may even be imposed on defendant because of reduction allowed. Thus, while it was held that the trial court could not require that defendant should, upon plaintiff's entering the remittitur, and for the benefit of a reduced judgment being rendered, be made to surrender his right to appeal, the court said: "We do not doubt that Judge Prince (the trial judge) might have provided in the order that the defendant should do anything necessary to preserve the right

(8) Skow v. Green Bay, etc., R. Co. (Wis.) 123 N. W. 138.

(9) 243 Ill. 263, 90 N. E. 673.

(10) 103 Me. 57, 68 Atl. 453.

(11) Richardson v. Cotton Co., 116 Ala. 381, 22 So. 478; Montgomery Traction Co. v. Knabe, 48 So. 501.

(12) 81 S. C. 522, 62 S. E. 848.

of the plaintiff as a condition of new trial, such, for example, as securing the reduced amount, if it should stand."

The logic of this is not very apparent, especially as the court says, what is patently true, that: "When, in the exercise of his judgment, the circuit judge makes an order that a new trial be granted unless the plaintiff remits so many dollars from the verdict that is an adjudication that the verdict is by that amount clearly excessive, and that the defendant is of legal right entitled to be relieved from the excess or have a new trial."

A very recent decision by the Supreme Court of Missouri[13] shows that that tribunal, believed that the verdict was grossly excessive, yet could be affirmed conditionally on remittitur upon the theory that the amount was not swelled by passion and prejudice. The verdict was for $75.000 actual, and $75,000 punitive, damages in a libel case, and plaintiff was given the option to remit two-thirds of each class of damages, so that the total damage would stand at $50,000.

The majority opinion reviews Missouri and other decisions to the effect that excessive verdicts not so by reason of prejudice or passion may be cured by remittitur, and, considering that it was found by the court that no attempt was made to justify the publication of the libel, this case must be taken as squarely ruling, that a verdict swelled by passion or prejudice, in a case where liability is undisputed, is not curable by remittitur. The serious question in the mind of the majority appears to have been whether or not, though there was no question as to liability, remittitur was proper, and holding, that the verdict was not believed to be perverted as to amount, remittitur was allowed. The opinion cites several cases wherein it was stated the great excess did not manifest passion and prejudice, but I do not think they well support the court. For example there is cited the Mann case, *supra*. There the verdict was in a suit for conversion of cattle, and it was reduced from $39,000 to $22,000, and Justice Harlan, answering the contention that either the jury were "governed by passion or had deliberately disregarded the facts that made for defendant," reasoned that either amount could have been predicated upon some honest view of evidence as to value of the cattle converted. In other words the court's view and that of the jury could have been the result of calculation on values. A further case relied on was Baxter v. Cedar Rapids,[14] where the verdict in a personal injury case was reduced from $5,750 to $3,000. The court merely observed that: "Juries may, and frequently do, err in estimating the amount of a recovery, when there is no ground for claiming that they were influenced by prejudice or passion."

When May Verdict be Taken to Show Passion or Prejudice?—The conclusion of the court in the Cook case, in a kind of trial peculiarly liable to an influence foreign to a consideration of a cause upon its merits, that a verdict for $150,000, excessive by $100,000, does not of itself show the probable presence of passion and prejudice, makes one wonder what sort of excess in any kind of case should presume their presence. This court does admit that verdicts on their face in personal injury cases may manifest prejudice or passion,[15] and for that reason forbid remittitur. In such class of cases a verdict three times too large has been held to indicate passion and prejudice.[16] A Kansas court[17] held, that a verdict in a slander case of $4,000, where the trial court thought $500 was enough, should have been considered to show passion and prejudice.

Remittitur in Passion and Prejudice Cases.—There are statements in cases that, where passion and prejudice affect the re-

(13) Cook v. Globe Printing Co., 127 S. W. 332.

(14) 103 Iowa, 599, 72 N. W. 790.

(15) Chitty v. Railroad, 148 Mo. 64, 49 S. W. 868; Pantello v. Railroad, 217 Mo. 645, 117 S. W. 1138; Chilanda v. Railroad, 213 Mo. 244.

(16) Railroad v. Cummings, 20 Ill. App. 333.

(17) Steinbuchel v. Wright, 43 Kan. 607, 23 Pac. 560.

sult, this vitiates the entire verdict and the Cook case must be considered as authority, that this rule applies as well to cases where there is no dispute as to liability as when there is. There are cases, however, that hold that improper influence, whether of one character or another, which merely pertains to damages and not to liability, leaves the verdict remediable by remittitur. Indeed it would seem that a verdict whose amount is merely swelled by passion or prejudice is a fairer mark for remittitur in the curing or error, than one merely thought to be excessive by a court, when a jury honestly believed otherwise. In the former case there is, in no proper sense, any interference with the rightful judgment of the jury on a question of fact; in the latter case there is. And it seems to me some courts thus regard the matter.

The cases allowing remittitur in passion and prejudice verdicts concede freely that, if there is a substantial controversy as to liability, remittitur is not permissible. Thus in a Minnesota case[18] is was said there was "a fair probability that the jury were influenced by the same passion and prejudice in determining other issues, that induced them to give excessive damages." Therefore a new trial was ordered. A prior decision in that state appeared to consider it necessary to remittitur, that the amount should be the result of passion and prejudice, or the jury's province would be invaded,[19] but this is a departure from former ruling on the opposite theory.[20]

In Montana,[21] the rule is stated to be that, where it is apparent that passion and prejudice have entered into the decision, a new trial should be granted, unless it is also apparent the verdict is otherwise correct than in amount and the ends of justice will be fully served by requiring the successful party to remit the excess.

In a Tennessee case[22] it was ruled that excessiveness arising out of passion, prejudice or caprice, may be cured by remittitur where the only question is as to damages and no dispute as to liability.

In Texas[23] the contention that excessiveness arising out of passion and prejudice required a verdict to be set aside notwithstanding remittitur was said to have force only where the evidence is conflicting upon the issue of liability. In Wisconsin[24] it was held that the rule as to passion and prejudice admitting remittitur "is only applicable in cases where it is clear that the perverse conditions mentioned only affected the amount of recovery. If it appears that the elements of passion and prejudice may have entered into, and probably did affect the decision of other questions in the case, the court's duty is to grant a new trial absolutely." Here it is seen the general rule is for remittitur and exceptions are stated to exist. In other states the converse form of statement is adopted, but there is definite agreement on the principle, that if the improper influence only relates to amount, remittitur is proper.

Summary.—As stated in 59 Cent. L. J. 454, in annotation, the tendency is in favor of remittitur in unliquidated damage cases as well as in those where the excess is exactly ascertainable, but no court has seemed to state the precise justification for the practice so well as the Wisconsin court. Illogically, too, it seems to us, have all the courts, which admit remittitur in such cases, proceeded when they deny it in passion and prejudice cases, where there is no question as to liability. We can conceive of a court allowing remittitur in that class of cases and denying same where excess is the result of a jury's honest judgment, but to say one improper element, which does not belong in a verdict, on any legal theory, cannot have the surgery of decision applied

(18) Ewing v. Stickney, 107 Minn. 217, 119 N. W. 802.

(19) Goss v. Goss, 102 Minn. 346, 113 N. W. 690.

(20) Plaunt v. Transfer Co., 90 Minn. 499, 97 N. W. 433.

(21) Garwood v. Corbett, 38 Mont. 364, 99 Pac. 958; Helena, etc., R. Co. v. Lynch, 25 Mont. 497, 65 Pac. 919; Lewis v. Railroad, 36 Mont. 207, 92 Pac. 469.

(22) Railroad v. Roberts, 113 Tenn. 488.

(23) Railroad v. Wallis, 104 S. W. 418.

(24) McNamara v. McNamara, 108 Wis. 613, 84 N. W. 901.

to it as well as another is beyond our understanding. Had the Missouri Supreme Court proceeded on the theory that however the excess arose in the Cook case, where liability was clear, it ought to be eliminated, it would have given a rule of some use. As it is there must exist sympathy with the minority view in that case, that now, in that state passion and prejudice can never be asserted of any verdict, because the damages it contains are outrageously enormous, and vitiate the verdict on its very face.

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TELEGRAPH—CONFLICT OF LAWS.

WESTERN UNION TELEGRAPH CO. v. FUEL.

Supreme Court of Alabama, Feb. 10, 1910.

A contract for the transmission and delivery of a message is, as to its nature, obligation, and validity, governed by the law of the place of performance.

The facts and pleadings sufficiently appear from the opinion. The court, at the request of the defendant, gave the following charge: "(6) Gentlemen of the jury, I charge you that plaintiff is not entitled to recover any damages in this case for mental worry or mental suffering, during his trip from Barton to Tullahoma, on account of the fact that he did not get to look on the face of his dead wife, or to make preparations for her burial." The court gave this charge, with the following oral explanation: "Gentlemen of the jury, I charge you, if you find for the plaintiff, he is entitled to recover for his mental suffering, if you find that he did so suffer, on account of the fact that he did not get to look on the face of his dead wife, or to make preparations for her burial after his arrival at Tullahoma." The following charge was refused to the defendant: "(11) If the jury believe from the evidence that the wires of the defendant were interfered with by parties between Memphis and Barton, on the morning of October 26, 1907, so that the message sued on could not be transmitted from Memphis to Barton, and that the parties so interfering with the wires were not charged by the defendant with any duties in the transmission of said message, then I charge you that the defendant is not responsible for the action of said person interfering with the wires, even though such person so interfering with the wires were the agents of the defendant."

McCLELLAN, J.: The action is by the sender, acting through an agent, for the breach of a contract to transmit and deliver, with due diligence and care, a telegram announcing the death of plaintiff's (appellee's) wife. The complaint in two counts, alleges the substance of the contract and its breach. The demurrers, objecting that averment of negligence, or willful or wanton disregard of plaintiff's rights in the premises, was omitted, were not well taken. The proper averment of the contractual status created by the parties and its breach, in this class of cases, as in all others for a breach, meets all the requirements of good pleading. Had the action been ex delicto (Krichbaum's Case, 132 Ala. 535, 31 South. 607), the point suggested by the demurrers would have been well taken. The damages claimed are for mental anguish, viz., that suffered in consequence of not being able to see the face of his wife, after death and before burial, and that inflicted on account of the deprivation of opportunity of making disposition of the remains of his wife as he desired, and of attending her burial, and of making the preparation therefor. Mental anguish was, if suffered, a proper element of recoverable damages in this case. Krichbaum's Case, 132 Ala. 535, 31 South. 607; Wilson's case, 93 Ala. 32, 9 South. 414, 30 Am. St. Rep. 23, and Menker's case, 145 Ala. 418, 424, 41 South. 850, among others. The position of this court on the question of recoverability of damages, in telegraph cases, for mental anguish suffered, is too deeply grounded to now allow investigation with a view to change.

Aside from general traverse of the allegations of each count, it was undertaken to be specially pleaded by original pleas 2 and 3, by way of confession and avoidance, that the appliances for transmitting the message from Memphis, Tenn., to Barton, Ala., that being the usual routing for messages from Tullahoma, Tenn., the initial office, were interfered with, and prompt transmission and delivery prevented, by unknown parties. Among other grounds, the demurrers to these pleas took the objections that the averments of interference were conclusions of the pleader, and did not show the facts constituting the interference. The court sustained the de-

murrers. The stated objection taken to both pleas was well taken, and the action of the court must be approved on that score, independent of any other grounds of the demurrers. The pleas did not show that the cause or causes of the "interference"—the acts working it—were unknown to the defendant, if, indeed, that could avail. It was averred that the persons causing the interference were unknown; but this did not negative the other fact. Furthermore, the pleas did not negative, as they should, the fact that there was no other means, within duty, whereby the message might, with promptness, have been transmitted to Barton, Ala. Plea 3 as amended was identical with original plea 3, except it was averred that the agent at Tullahoma did not know of the "interference" at the time the message was filed with him for transmission and delivery. The amendment wrought no change in the plea from that present in the original. The general obligation and duty of such companies is set down in W. U. T. Co. v. Emerson, 49 South. 820, as taken from Joyce's excellent work on the law of Electricity.

The contract, in this instance, was for the transmission and delivery, with due diligence, of the message filed with the company, from Tullahoma, Tenn., to Barton, Ala. In Sou. Ex. Co. v. Gibbs, 155 Ala. 303, 46 South. 465, 18 L. R. A. (N. S.) 874, the subject matter of the contract was goods to be transported from another, into this state. It was there held that the plea of performance was in Alabama, and that the law of the place of performance should govern as to the nature, obligation and validity thereof. The principle must be the same here. The only practical difference is that in the one case goods were to be transported and delivered, and in the other intelligence. While, from necessity, the measure of care and diligence and assurance is not the same, of course, yet the contracts were the same in respect of performance, viz., both found inception in another state, but neither could be performed elsewhere than in Alabama. Reference to 2 Joyce, sec. 908, and notes thereto, will show that there is a difference of opinion in other jurisdictions, on the question. However, this court's attitude, as taken in the decision cited, is regarded as sound, and to renounce its application to this case would necessarily overturn the principle announced and applied in that case. W. U. T. Co. v. Hill, 50 South. 248.

The charges wherein the defendant sought to have the jury instructed that plaintiff could not recover for mental pain or anguish suffered in consequence of the deprivations before stated as claimed in the complaint, were properly refused. Crumpton's case, 138 Ala. 632, 36 South. 517; Ayers' case, 131 Ala. 391, 31 South. 78, 90 Am. St. Rep. 92; 5 May. Dig. p. 902, subd. 25, noting other authorities. The relationship of the plaintiff to the deceased was that of husband.

There was testimony tending to support the averments of the complaint, and, if credited by the jury, to have entitled the plaintiff to nominal damages. The affirmative charge was, on this score alone, well refused. Besides this, under our decisions, it was also open to the jury, on the evidence, to award damages for mental anguish for the breach of the contract declared on. Authorities supra.

The explanation, it was not a qualification, of charge 6, given for defendant, was not improper. Callaway v. Gay, 143 Ala. 524, 529, 39 South. 277, following Eiland's case, 52 Ala. 322. The explanation was, as appears, merely an effort to forestall the possibility that the jury might take the charge as forbidding a recovery within the legal limits and as claimed in the complaint. Nothing was taken from the charge, as written, by the language of the court.

Charge 11 was well refused, because it limited the interference hypothesized to "the morning of October 26, 1907," whereas the interference might have ceased during the remainder of that day, and, if so, the defendant could not justify delay subsequent to the removal of the interference.

The verdict was for $1,000. It is insisted that the amount is excessive. The court below held to the contrary. We are not convinced that the ruling was erroneous. In Seed's case, 115 Ala. 670, 22 South. 474, the compensation for mental anguish was held to be a matter within the impartial determination of the jury, and the finding of $1,500 was sustained.

The assignments argued in argument do not rest on error below.

Affirmed.

NOTE.—*The Law of the Place Governing an Interstate Telegram.*—There seems a very decided conflict in the cases upon the proposition above alluded to, ruled by the principal case. A case strongly supporting the principal case is that of Tel Co. v. Lacer (Ky.), 93 S. W. 34, 5 L. R. A. (N. S.) 751. The opinion distinguishes the contract to deliver a telegram from one to ship property from one state to another, as to which it had been held in Kentucky that the shipper or consignee has a right to sue where the breach occurs, with the law of that place to apply. In the Lacer case the negligent act by which the sendee's name was altered, occurred in Indiana. The

opinion says: "But, argues appellant, the performance in this case was in course of execution in Indiana, where it was breached, i. e., when appellant negligently altered the address so as to cause it to miscarry. The thing contracted for in this case was not to carry property, but to do a service. The service which was contracted for was to expeditiously deliver the correct message to the addressee at the point addressed. * * * Transcribing it into characters of the Morse code, or otherwise temporarily rendering it unintelligible to ordinary persons, would not affect the contract or any rights of the parties, so long as it was finally and in due time communicated to the person intended. * * * It was a single undertaking, the performance of which was to take place in Kentucky. The delivery of the message, the communication of the intelligence to the person named, was the thing to be done. The failure to deliver could not occur till he failed to deliver it at the place and within the time contracted for." See also North Packing Co. v. Tel. Co., 70 Ill. App. 275.

The theory of there being "a single undertaking," which brought the Kentucky court to its conclusion, operated precisely the other way on the mind of the Supreme Court of South Carolina. Thus in the case of Brown v. Tel. Co., 67 S. E. 146, there is cited the case of Balderston v. Tel. Co., 79 S. C. 160, 60 S. E. 435, as supporting the conclusion that the law of the sending place governs, and quoting from the latter case it is said: "The undertaking is whole, single and susceptible of becoming fixed only in the final act contemplated. * * * It cannot be denied that such a doctrine is a just and reasonable one. The plaintiff cannot be expected to determine the point on defendant's line where the failure of duty occurred, nor do we think it consonant with public policy to permit the defendant to show that the message was delayed at some specific point on its line and thus make plaintiff's right to recover depend upon the laws of that place."

These two cases, therefore, are in agreement in barring out intermediate states. But the South Carolina case goes upon the theory: "That the law of a state where a contract is made and is to be performed in whole or in part governs as to its nature, validity and interpretation." In other words, there is a contract for services at the sending place and at the place of delivery, and services at both places are contemplated to be given for a remuneration, and diligence is to be exercised at one place as well as the other. This view recognizes distance as a factor in the contract, while the principal case and its congeners seem not to. The place of the fault, that results in miscarriage of performance, appears to be the view in Tel. Co. v. See, 126 S. W. 78, decided by Supreme Court of Arkansas. Thus a telegram was sent from Kansas by way of Kansas City, Mo., to Fort Smith, Ark. The opinion says: "The undisputed evidence shows that the negligence occurred in the State of Missouri or of Kansas. * * * In either event, the negligence did not occur in the State of Arkansas." As "in neither of those states are damages recoverable for mental anguish," the suit was dismissed. The error consisted in mistake of name of sendee. For other cases by same court see Tel. Co. v. Crenshaw, 125 S. W. 420; Tel. Co. v. Griffin, 122 id. 489.

Between the three types of cases represented by the cases above are others, where statutes affect the question. Thus in Graf v. Tel. Co., 108 Tenn. 39, 64 S. W. 1063, 56 L. R. A. 301, 91 Am. St. Rep. 706, a Tennessee statute was held to be a sufficient basis for recovery for mental anguish for neglect to promptly deliver a telegram sent from a state not allowing such, sender as well as addressee being a proper party plaintiff. The court, upon an extensive review of the authorities as one of general principle agreed, that, if suit were upon the contract the action would not lie, but the statute of the place of delivery had a right to impose a penalty for non-delivery, or for non-prompt delivery, and as it gave specifically a right of action to any party aggrieved, the only question remaining was if the sender in the foreign state could be deemed such.

The Arkansas case above referred to does not appear expressly to refer to a state statute on this subject, which provides that telegraph companies shall be liable for mental anguish in receiving, transmitting and delivering messages, but most probably it is to be so understood, as generally mental anguish may not be recoverable where unaccompanied by physical injury. If so, the case above reported would seem to be correct on the theory advanced in the Tennessee case. See, however, Peay v. Tel. Co., 64 Ark. 538, 43 S. W. 965, 39 L. R. A. 538, decided prior to such statute, which on general law rejected the rule in the principal case.

Reed v. Tel. Co., 135 Mo. 661, 37 S. W. 904, 34 L. R. A. 492, 58 Am. St. Rep. 609, is much relied on in other states for the rule that the sending place determines the governing law. The opinion thought an agreement to transmit and deliver a telegram was "like a contract of affreightment," with "its validity and interpretation ordinarily to be governed by the law of the state in which it was made. Both parties to this agreement for the transmission of the message resided in Iowa. The tariff was paid and defendant entered upon the performance of the contract in that state."

This looks very clear to us. The very thing that was in Iowa was transported to Missouri. Its form was changed in the former state by the wand of civilization and the old form restored in Missouri—or, at least, interpreted for practical use. Following this case are Bryan v. Tel. Co., 133 N. C. 603, 45 S. E. 938; Hancock v. Tel. Co., 137 N. C. 497, 49 S. E. 952, 60 L. R. A. 403. In Tel. Co. v. Waller, 96 Tex. 589, 97 Am. St. Rep. 936, 74 S. W. 751, the case of Tel. Co. v. Cooper, 29 Tex. Civ. App. 591, 69 S. W. 427 is approved, and that bases itself on the Reed case, supra.

In 2 Whart. Confl. of Law, 1082 and 1083, application of the rule in contracts of affreightment is said to include telegram so as to permit recovery of damages for mental anguish, if the law of the sending state is thus, though it be otherwise in the state to which the telegram is sent. There are not many cases cited by the author, but it seems to us that, if all that can be said to the contrary is said by the Kentucky case, *supra*, the opposing cases have little to rest upon.

We may concede possibly the correctness of the Tennessee and Arkansas cases as resting on statutes and that they are not given any extraterritorial force, but the Missouri case and its followers, having equally as practical application, also are preferred as bringing to bear on the contract the only law that the primary parties are presumed to know. C.

JETSAM AND FLOTSAM.

THE DEMISE OF THE CROWN.

(The following excerpt is from 74 London Justice of the Peace, 230, the bordering of all the columns of May 14th, 1910 number being in deep black. The avoidance of interregnum and discontinuance of legal processes and indictments at common law is set forth very clearly and also the past acts of parliament have played in this regard.)

Le Roi est mort! Vive le Roi! As one emerged into the Strand on Monday morning, and noticed the flag above the Law Courts floating again at the masthead for a brief spell while George the Fifth might be declared King, one realized the truth of the old saying that "the King never dies." Edward indeed is dead; but George is King, and must be proclaimed as such; and, in theory at least, the proclamation of a king is a glad event. If we turn to the pages of Blackstone, we find the legal principle clearly set forth: "A third attribute of the King's Majesty," he says, "is his perpetuity. The law ascribes to him, in his political capacity, an absolute immortality. The King never dies. Henry, Edward, or George may die, but the King survives them all; for immediately upon the decease of the reigning prince in his natural capacity his kingship or imperial dignity by act of law, without any interregnum or interval, is vested at once in his heir, who is, eo instanti, king to all intents and purposes. And so tender is the law of supposing even a possibility of his death, that his natural dissolution is generally called his demise—demissio regis vel coronae, an expression which signifies merely a transfer of property, for, as is observed in Plowden, when we say 'the demise of the Crown,' we mean only that, in consequence of the disunion of the King's natural body from his body politic, the kingdom is transferred or demised to his successor; and so the royal dignity remains perpetual. Thus, too, when Edward IV., in the tenth year of his reign, was driven from the throne for a few months by the House of Lancaster, this temporary transfer of his dignity was denominated 'his demise,' and all process was held to be discontinued as upon a natural death of the King."

At common law, as will be seen from the concluding words of our quotation from Blackstone, a demise of the Crown had the effect of discontinuing legal processes and indictments. Moreover, it dissolved Parliament and vacated all offices held under the Crown—an inconvenient, not to say dangerous state of affairs, which has now been remedied by statute. So far as Parliament is concerned, the existing provisions are to be found in section 51 of the Representation of the People Act, 1867, and section 3 of the Meeting of Parliament, 1797, by the former of which the duration of an existing Parliament is no longer to be affected by the death of the Sovereign, whilst by the latter, if the last Parliament has been dissolved and the day appointed for the assembling of a new one has not arrived, the last Parliament is revived for six months, unless sooner prorogued or dissolved by the successor to the Crown. Finally, by the succession to the Crown Act, 1707, upon the death of the Sovereign Parliament, if separated by adjournment or prorogation, must at once meet, convene, and sit. By the last-mentioned Act, also, the various public seals in use for the time being are to continue and be made use of as the respective seals of the successor until he gives orders to the contrary.

The combined effect of 4 W. & M. c. 18, s. 6, and 1 Anne c. 2, s. 4, is that all writs and pleas generally in the various courts, including indictments or informations for any offense or misdemeanor, continue and remain in full force and effect upon the demise of the Crown, and may be proceeded upon in their ordinary course. At the date of the death of Queen Victoria the general rule was that officers of the Crown held office for six months after the demise, unless sooner removed or superseded—see as to the Privy Council the succession to the Crown Act, 1707, as to Judicial Commissions 1 Anne c. 2, s. 5, and as to other "offices, places, and employments, civil or military," the same statute of 1707. Whilst such was the state of the law it was considered necessary for the new Sovereign to issue a Proclamation "requiring all persons being in office of authority or government at the decease of the late Queen," to proceed in the performance and execution of all duties belonging to their respective offices, whilst they should hold the same respectively during the King's pleasure (see 65 J. P. 58). In 1901, however, was passed the Demise of the Crown Act, by which "the holding of any office under the Crown, whether within or without His Majesty's dominions, shall not be affected, nor shall any fresh appointment thereto be rendered necessary, by the demise of the Crown." Probably, therefore, on the present occasion no similar proclamation will be made.

A LAWYER'S TEN COMMANDMENTS.

Duties to Client:

1. Be loyal to the interests of the client whose cause you have championed and in his cause be guided by high moral principle. Do not let the amount of your fee determine the amount of your industry.

2. Neither underestimate nor overrate the value of your advice and services in your client's behalf.

Duties to Court:

3. Be honest with, and respectful to, the court.

4. Do not depend on bluff or trick or pull to win a case, but depend on thorough preparation.

Duties to Public:

5. Give a measure of your best legal service to such public affairs as may best serve your community. Remember also to protect the defenseless and oppressed.

6. Never seek an unjustifiable delay. Neither

render any service nor give any advice involving disloyalty to the law.

Duties to Fellow Attorneys:

7. Be friendly with, and keep faith with the fellow-members of the bar; publish their good characteristics rather than their shortcomings. Especially be on friendly terms with the young man starting in the legal profession and if necessary, inconvenience yourself in order to encourage him.

8. Do not discuss your cases with the court in the absence of opposing counsel.

Duties to Self:

9. Avoid the "easy come," "easy go" method with your finances. Bank no fee until paid.

10. Keep up regular habits of systematic study of the law. Acquire special knowledge in some one of its branches. Remember, the law is a jealous master.

JAMES M. OGDEN.

Indianapolis, Ind.

GROSSCUP AND HIS CRITICS.

The Chicago Inter-Ocean, in alluding to the attacks which have recently been made upon Judge Grosscup, says that "it is difficult to see how the charges can be wholly ignored by the judge. There is an old saying that a judge should be, like Caesar's wife 'above suspicion.' Not having any special knowledge of the matters here referred to, and therefore, assuming that the Hon. Peter S. Grosscup is a worthy judge, the Inter-Ocean is compelled to admit that in the expressed opinion of many reputable lawyers, the Hon. Peter S. Grosscup does not measure up to the ideal judicial standard. We know not whether there is any such precedent for such course, but looking at the situation as it is and noting the way in which the air is filled with these tales, we would suggest that he should consider whether he should longer sit silent under these accusations—whether he should not come boldly forward to meet and put them down by demanding that investigation of his life and official conduct which is admitted to be a possible outcome of the steps already taken in Washington. The judge will have all the advantage in such a trial."

The attitude of reputable newspapers evidences a reasonable demand on the part of the people that neither Congress, the profession nor Judge Grosscup can afford to ignore.

The Central Law Journal intends to use what influence it has to clear the profession from the necessity of being put constantly on the defensive by occupants of the bench, who by their actions may tend to bring discredit on the bench and the administration of the law.

A few lawyers have undertaken the defense of Judge Grosscup. We see no incentive for such efforts in behalf of a judge who will not defend himself. Let Judge Grosscup take up each of the serious charges made against him, some by his own clerk on affidavit, and explain them, and if the explanation is satisfactory on its face, the profession will undoubtedly be willing to throw the burden of proving the charges on those that make them.

So far as we are concerned we have none but the most friendly feeling for Judge Grosscup. Our interest in this controversy is wholly impersonal. We are jealous of the good name of the profession and of the integrity of the bench.

THE BIBLE WE KISS IN OUR COURTS

Up into our court house walking,
Saw I judge and lawyers talking—
Thought they'd talk and talk and talk
For evermore.

Heard the lawyers in commotion
Shout of commonwealth's devotion
To the care of all its subjects,
More and more.

But instead of consolation
I was filled with consternation
At what happened in that court-room
O'er and o'er.

Saw I witness, lecherous devil,
Known by men in sin to revel,
Coming forth to testify; saw
This and more.

Saw the clerk with bible lifted,—
To his lips for kiss 'twas shifted,—
Vile and impious wretch! Saw this and
Thought it o'er

Thought I saw my sainted mother
As she knelt once with another
In my cherished days of youth, those
Days of yore,

Saw her read those sacred pages,—
God's own Word,—sent for all ages,
Saw her read and read and live it
O'er and o'er.

What would she think if she knew it?
If in court-room she could view it?—
Sacrilegious lips should touch it,
Nevermore!

Microscopic lenses seeking
Also show its covers reeking
With tuberculosis germs, yea, this
And more!

Show bacilli vile, prolific,
Say physicians, analytic,
Worse than all diseases quarantined
And sore.

Doctors say through osculation
We get sure inoculation
By the sputa and the mucus,
More and more.

Yet I saw there maidens comely,
Saw there women pure, tho' homely,
Saw there women vile and vicious,
Kiss it o'er.

Oh, Virginia, fair creation!
Stop this useless desecration!
Stop disease in propagation,
More and more.

Don't await more information;
Don't let your procrastination
Lead the victims to the harvest
Anymore!

God forgive if I'm offending;
Aid my efforts for the ending
Of this awful desecration and disease
For evermore.

CYRUS P. FLICK.

Norfolk, Va., May 25, 1910.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Abstracts of Title**—Privity of Contract.—As a general rule, an abstractor can be held liable only to the person who employed him for negligence in making or certifying an abstract of title.—Thomas v. Guarantee Title & Trust Co., Ohio, 91 N. E. 183.

2. **Accident Insurance**—Investigation of Claim.—An accident insurance company having investigated a claim on unverified proofs and denied liability, the beneficiaries were not required to furnish other proofs.—Fidelity & Casualty Co. of New York v. Cooper, Ky., 126 S. W. 111.

3. **Adverse Possession**—Deed.—Where a grantor conveyed certain vacant land, and the land was not in the possession of any one else, the deed had the effect of giving possession to the grantee so as to preclude adverse possession by one not in actual possession.—Burke v. Trabue's Ex'x., Ky., 126 S. W. 125.

4. **Alteration of Instruments**—Filling in Blanks.—Where a note was signed by the maker with a blank for the place of payment, the payee or any subsequent holder could fill the blank by writing in a place of payment, either within or without the state.—Diamond Distilleries Co. v. Gott, Ky., 126 S. W. 131.

5. **Associations**—Agents.—An unincorporated association is not regarded as a legal entity, and it necessarily follows it cannot, as such, appoint or have an agent, though the members may do so for themselves as individuals, and are in such case joint principals.—Brower v. Crimmins, 121 N. Y. Supp. 648.

6. **Attachment**—Rebutting On Two Grounds.—Where a warrant of attachment was issued on two grounds, defendant was not entitled to a dissolution of the writ on rebutting the prima facie showing made as to one of the grounds, where he admitted the existence of the other.—Carolina Agency Co. v. Garlington, S. C., 67 S. E. 225.

7. **Attorney and Client**—Retainer.—A retainer is a payment in advance, to cover future services and disbursements until further provision is made.—Severance v. Bizallion, 121 N. Y. Supp. 627.

8. **Bankruptcy**—Amendment.—Where a bankruptcy petition stated imperfectly the grounds of bankruptcy, it was amendable under the rules for the amendment of pleadings generally so as to state subsequent acts of bankruptcy.—In re Hamrick, U. S. D. C., N. D. Ga., 175 Fed. 279.

9.——Effect of Discharge.—A note dated two days subsequent to a petition in bankruptcy, and not shown to be for a previous indebtedness, is not discharged by the discharge of the maker in a bankruptcy proceeding.—Cohen v. Pecharsky, 121 N. Y. Supp. 602.

10.——Infant Bankrupt.—Bankr. Act held to authorize a voluntary adjudication against an infant owing debts for which his property is legally chargeable.—In re Walrath, U. S. D. C., 121 N. Y. Supp. 243.

11. **Bills and Notes**—Fraud.—Under Negotiable Instruments Law, where a note sued on was obtained by fraud and defendant denied that plaintiff was an innocent holder for value, the burden was on plaintiff to show that it was a holder in good faith.—Cedar Rapids Nat. Bank v. Myhre Bros., Wash., 107 Pac. 518.

12.——Power of Transferee for Collection.—A transferree for collection of a note has such a title as to enable him to sue thereon in his own name.—Day v. Rogers, Ga., 67 S. E. 279.

13. **Boundaries**—Monuments.—A description of land by courses and distances without mentioning monuments is not controlled by monuments subsequently erected.—Talbot v. W. K. Smith Security Savings & Trust Co., Oreg., 107 Pac. 480.

14. **Brokers**—Commission.—A broker, employed to procure a tenant for a building, is entitled to a commission if he procures one able, ready, and willing to lease the property upon the owner's terms, if the owner accepts him as a tenant, even though he afterwards refuses to carry out the transaction.—Cohen v. Ames, Mass., 91 N. E. 212.

15. **Carriers**—Co-partners.—If two or more carriers are co-partners for transporting freight over their respective lines, a contract made by one of them with a shipper binds them all, in absence of a stipulation therein to the contrary.—Crockett v. St. Louis & H. Ry. Co., Mo., 126 S. W. 243.

16. **Carriers of Passengers**—Crowded Train.—In an action by a passenger for being compelled to ride in a crowded train, the carrier held entitled to show that it had no notice of any extra travel which would require more than the usual train.—Chesapeake & O. Ry. Co. v. Austin, Ky., 126 S. W. 144.

17. **Carriers**—Liability for Stolen Goods.—Where plaintiff's goods, while in the possession of a common carrier, were stolen, but part of them were found by the police, such carrier was not thereby relieved of his obligation to deliver such part; he having an adequate right to recover them.—Heyman v. Stryker, 121 N. Y. Supp. 592.

18.——**Misdelivery.**—A carrier was liable for damages caused by delivering to plaintiff's consignee cattle other than those shipped by plaintiff, irrespective of to whom such other cattle belonged.—Edwards v. Lee, Mo., 126 S. W. 194.

19.——**Riding on Platform.**—A rule that passengers must keep off the platform of moving cars is not inflexible, as a passenger may be compelled by necessity to do so.—Brice v. Southern Ry. Co., S. C., 67 S. E. 243.

20.——**Riding on Platform.**—Whether a passenger injured by being thrown from the platform of the coach by a lurch of the train was guilty of contributory negligence in being on the platform held for the jury.—Central of Georgia Ry. Co. v. Brown, Ala., 51 So. 565.

21.——**Variance.**—Where the only cause of action declared on in the petition was defendant railroad's negligent failure to transport plaintiff's hogs promptly, plaintiff could not recover for injuries to the hogs while being loaded or unloaded by defendant's employees.—Hunter v. St. Louis Southwestern R. Co., Mo., 126 S. W. 254.

22. **Chattel Mortgages**—Payment.—Payment of a chattel mortgage debt divests the legal title of the mortgagee.—Pinckard & Lay v. Bramlett, Ala., 51 So. 557.

23.——**True Value on Sale.**—Where the evidence in the record showed that plaintiffs' agent purchased property at their own chattel mortgage sale, they were thereby made accountable for its true value.—Smith v. French, N. C., 67 S. E. 249.

24. **Commerce**—Peddlers' License.—A statute imposing a tax on peddlers held valid as to transactions not within interstate commerce, though void because imposing an unlawful burden on interstate commerce.—State v. Byles, Ark., 126 S. W. 94.

25. **Constitutional Law**—Jurisdiction Not to be Restricted.—Jurisdiction given to the courts by the constitution cannot be taken away or curtailed by the general assembly, but it may prescribe the mode of procedure by which it is to be exercised.—Redmond v. Quincy, O. & K. C. R. Co., Mo., 126 S. W. 159.

26.——**Right to Sell Intoxicating Liquor.**—No person has a vested right to sell intoxicating liquors, and the regulation of the business, when delegated to a municipality, will not be reviewed when lawfully exercised.—Darby v. Pence, Idaho, 107 Pac. 484.

27. **Contracts**—Defense of Forgery.—Where a written instrument, not declared on, is offered in evidence, defendant may, without formal pleadings, attack it as a forgery.—W. H. Howard Piano Co.v. Glover, Ga., 67 S. E. 277.

28.——**Inadequacy of Price.**—Where parties are competent, and no unfair or fraudulent advantage is taken of one who, with his eyes open, understandingly and freely makes a bad bargain, inadequacy of price will not authorize rescission.—Matthis v. O'Brien, Ky., 126 S. W. 156.

29.——**Pari Delicto.**—A party to an illegal agreement to swindle others, who was himself defrauded by his associates, held not entitled to recover the money lost from one of them.—Schmitt v. Gibson, Cal., 107 Pac. 571.

30. **Corporations**—Foreign.—A foreign corporation, selling to a customer in the state through a traveling agent, need not take out a license to do business in the state.—Greenbrier Distillery Co. v. Van Frank, Mo., 126 S. W. 222.

31.——**Sale of Land.**—A resolution of the board of directors of a corporation held to authorize a sale of its lands to those shareholders who are not directors.—Davis v. Nueces Valley Irr. Co., Tex., 126 S. W. 4.

32. **Covenants**—Easement Not Breach of Covenant.—The existence of a public easement does not constitute a breach of the covenant of general warranty.—Burke v. Trabue's Ex'x., Ky., 126 S. W. 125.

33. **Criminal Trial**—Directing Verdict Against Accused.—The court may direct a verdict against the state but not against accused, though it may charge that if the jury believe the evidence they will find defendant guilty.—Everett v. Williams, N. C., 67 S. E. 265.

34.——**Right to Grand Jury Minutes.**—One charged with crime is not entitled before or at the trial to the minutes of evidence taken before the grand jury on which the indictment was found, nor to an inspection of the transcript thereof.—State v. Rhoads, Ohio, 91 N. E. 186.

35. **Customs and Usages**—Unlawful Customs.—A custom which would relieve a purchaser from the obligations imposed on him by the doctrine caveat emptor is contrary to law.—Thomas v. Guarantee Title & Trust Co., Ohio, 91 N. E. 183.

36. **Death**—Widow's Action.—In a widow's action for damages for her husband's negligent death, plaintiff could testify as to the number and ages of her minor children.—Ogan v. Missouri Pac. Ry. Co., Mo., 126 S. W. 191.

37. **Dedication**—State Lands in Municipality.—Where land dedicated to a particular purpose is situated within a municipality, but is set aside by the state for certain purposes, the municipality cannot divert it; but the power of the state to do so is unlimited, unless there are contract relations or private rights of an abutting owner or other person involved.—Mahoney v. Board of Education, Cal., 107 Pac. 584.

38. **Depositions**—Disinterested Party.—A notary taking a deposition to be used as evidence in a pending case acts in a judicial capacity, and should be entirely disinterested, and, not only in taking down the questions and answers, but in the whole course of the proceedings, he should exercise a judicial discretion.—Redmond v. Quincy, O. & K. C. R. Co., Mo., 126 S. W. 159.

39. **Discovery**—Inspection of Premises.—Where the issue was whether a lessee of a coal mine returned it in the condition required by the lease, the court held authorized to permit an inspection of the premises by the lessee.—Henderson Min. & Mfg. Co v. Nicholson, Ky., 126 S. W. 139.

40. **Divorce**—Lien of Alimony.—A decree of divorce for future monthly payments held not to create a lien on defendant's property.—Mansfield v. Hill, Oreg., 107 Pac. 471.

41. **Eminent Domain**—Value for Tax Purposes Not Conclusive.—The value of land, though fixed by the owner when assessed for taxation, forms no criterion of its value in a proceeding to condemn it.—Crystal City & U. R. Co. v. Isbell, Tex., 126 S. W. 47.

42. **Escrows**—Delivery to Grantee's Agent.—A delivery of a deed to the agent or attorney of the grantee has the same effect as a delivery to the grantee personally, and cannot be an

escrow.—Alabama Coal & Coke Co. v. Gulf Coal & Coke Co., Ala., 51 So. 570.

43. **Estoppel**—Deed to Wife.—That defendant, who conveyed property to another, who in turn conveyed to defendant's wife, intended the conveyance to his wife to state that it should be her separate property held not to estop him from claiming that he did not intend to give her the property, but conveyed it to her to avoid claims of creditors.—Du Perier v. Du Perier, Tex., 126 S. W. 184.

44. **Evidence**—Corporation Minute Book.—A corporation's minute book is evidence both that its contents are correct and that, presumptively, proceedings not therein recited did not actually occur.—Shelby v. New York Steam Co., 121 N. Y. Supp. 619.

45.——Declarations of Land Occupant.—The declarations and conduct of a person in possession of land are competent as against himself or one claiming under him to explain his possession, and to show the true character thereof.—Clary v. Hatton, N. C., 67 S. E. 258.

46.——Res Gestae.—Insured's statement, made a few seconds after he was hurt, to the first person who reached him, as to how the accident occurred, held admissible as res gestae.—Fidelity & Casualty Co. of New York v. Cooper, Ky., 126 S. W. 111.

47.——Injurious Effect of Certain Prejudice.—The Court of Appeals will take cognizance of the universal belief among lawyers of the highly prejudicial effect on defendant in a personal injury action of an intimation that defendant is protected by employer's liability insurance.—Trent v. Lechtman Printing Co., Mo., 126 S. W. 238.

48.——Parol Proof of Written Contract.—No promise or understanding which the language of a written contract does not itself import can be proved by parol evidence.—Bradley Gin Co. v. J. L. Means Machinery Co., Ark., 126 S. W. 81.

49. **Executors and Administrators**—Commissions.—An executor held not entitled to commissions on the value of real estate divided among the residuary legatees in kind.—O'Bannon's Estate v. O'Bannon, Mo., 126 S. W. 215.

50. **Fraud**—Investigation by Purchaser.—A purchaser held not necessarily precluded from recovering for fraudulent representation of the seller, because of consulting with, or receiving information from, others in regard to the subject of sale.—Neher v. Hansen, Cal., 107 Pac. 565.

51. **Fraudulent Conveyances**—Deed to Wife.—Where defendant conveyed property to another, for the purpose of having it conveyed to his wife, in order to prevent it from being subjected for his debts, his wife would hold the property in trust for defendant, even if it was conveyed in terms to her separate use.—Du Perier v. Du Perier, Tex., 126 S. W. 10.

52. **Gaming**—Bank's Loan.—A bank extending credit to a cotton mill company held not a party to gambling dealings by the company.—Dowell v. Collin County Nat. Bank of McKinney, Tex., 126 S. W. 29.

53. **Highways**—Automobiles.—One using an automobile held required to have due regard for the equal rights of others, taking into consideration the tendency of his machine to frighten horses and cause injury to travelers.—Haynes Automobile Co. v. Sinnett, Ind., 91 N. E. 171.

54. **Homestead**—Rights of Infant.—The rights conferred by a probate homestead set apart for the benefit of the widow and minor children of a decedent cannot be surrendered by one or more of the beneficiaries to the detriment of an infant child.—Sanguinetti v. Rossen, Cal., 107 Pac. 560.

55. **Homicide**—Intent.—To warrant a conviction of assault with intent to kill, there must be proof of a specific intent to kill.—Roberson v. State, Ark., 126 S. W. 88.

56. **Husband and Wife**—Wife's Separate Estate.—Where materials are furnished by authority of a wife for a house on her land, a promise by her to pay for the same is implied.—Reid v. Miller, Mass., 91 N. E. 223.

57. **Interstate Commerce**—Validity of State Statute.—Laws 1909, c. 164, § 5, held not a burden upon interstate commerce in violation of the federal constitution, which does not protect an owner of intoxicating liquors in another state who comes into the state to solicit orders therefor.—State v. Sherman, Kan., 107 Pac. 33.

58. **Injunction**—To Stay Waste.—Injunction is proper in trespass to try title to stay waste which would result in irreparable injury to property pending the action.—Holbein v. De La Garza, Tex., 126 S. W. 42.

59. **Insane Persons**—Guardian or Curator.—An insane person needs a guardian of his person even though he have no property, but a curator only is needed where there is property or property interests to be protected.—Redmond v. Quincy, O. & K. C. R. Co., Mo., 126 S. W. 159.

60. **Interest**—Compound.—It is competent for parties to agree that interest payable at the end of a term shall also bear interest, and if the interest is made payable at a certain time, and is not then paid, it becomes a debt-bearing interest.—Burke v. Trabue's Ex'x., Ky., 126 S. W. 125.

61. **Intoxicating Liquors**—Selling Without License.—On a trial for selling whisky without a license, evidence of shipment of whisky to accused held admissible as corroborative of the testimony of a purchase of whisky from accused.—Sadler v. State, Ala., 51 So. 564.

62. **Landlord and Tenant**—Covenant Against Assignment.—The law looks with disfavor on attempts to use a covenant in a lease against assignments so as to forfeit the rights of the tenant.—Murdock v. Fishel, 121 N. Y. Supp. 624.

63.——Husband and Wife as Tenant.—Where land was leased to a husband, and both he and his wife lived thereon for the full term, both were estopped to deny the landlord's title, though she did not sign the lease.—Monroe v. Stayt, Wash., 107 Pac. 517.

64. **Life Insurance**—Delivery.—Delivery of a life policy to the soliciting agent for delivery to the applicant held a sufficient delivery as to the latter, although he died before actual delivery was made.—Gallagher v. Metropolitan Life Ins. Co., 121 N. Y. Supp. 638.

65.——Resting in Parol.—An insurance contract may rest in parol.—McIntyre v. Federal Life Ins. Co., Mo., 126 S. W. 227.

66. **Limitation of Actions**—Burden of Proof.—A defendant who pleads the statute of limitations has the burden of bringing himself with-

in the statute, and this burden rests on him throughout all the incidents involved in the plea.—Pemiscot Land & Cooperage Co. v. Davis, Mo., 126 S. W. 218.

67. **Marriage**—Mental Capacity.—In an action to annul a marriage on the ground that one of the parties was mentally incompetent, his mental condition at the time of the marriage must govern the question of his capacity to make the marriage contract.—Henderson v. Ressor, Mo., 126 S. W. 203.

68. **Master and Servant**—Actual Knowledge.—Actual knowledge is not necessary to fix the liability of a master for injuries to a servant through dangerous instrumentalities.—Lone Star Brewing Co. v. Solcher, Tex., 126 S. W. 26.

69.——Assumption of Risk.—A servant does not assume the risk of injury unless he not only knows the physical condition surrounding him, but appreciates the danger therefrom.—Osterholm v. Boston & Montana Consol. Copper & Silver Mining Co., Mont., 107 Pac. 499.

70.——Carrier to its Employees.—Since a railroad company is bound to provide a reasonably safe roadbed for the protection of its train employees, it is conclusively presumed to have knowledge of the unsafe condition of its tracks over which its trains run.—Leggett v. Atlantic Coast Line R. Co., N. C., 67 S. E. 249.

71.——Concurrent Negligence of Servant.—A master held liable for injury to a servant through its negligence, notwithstanding concurring negligence of a fellow servant.—Sullivan-Sanford Lumber Co. v. Cooper, Tex., 126 S. W. 35.

72.——Defect in Appliances.—A defect in electrical apparatus used in operating a printing press, which allowed the press to start suddenly when the power was turned off, was not latent, though hidden from view and discoverable only by an expert examination.—Oborn v. Nelson, Mo., 126 S. W. 178.

73.——Defect of Apparatus.—A railroad company was bound to know that in the course of time guy chains of a hoisting derrick boom would become unsafe from wear and natural causes, and would be negligent if it waited for them to break before strengthening or replacing them.—Ogan v. Missouri Pac. Ry. Co., Mo., 126 S. W. 191.

74.——Duty to Furnish Safe Appliances.—Where it is the duty of the foreman in a sawmill to keep the machinery in proper condition, he represents the master in the performance of a nondelegable duty, and is not a fellow servant of the sawyer.—Quinn v. Glenn Lumber Co., Tex., 126 S. W. 2.

75.——Duty to Warn.—A master is not required to caution a servant against unexpected, improbable, and unusual occurrences, but only against the usual and probable consequences that may flow from the exercise of proper care and attention while performing the duties of the employment.—Conkey Co. v. Larsen, Ind., 91 N. E. 163.

76.——Duty to Warn.—A master is required to warn even an adult servant of dangers attendant on the operation of machinery when he knows he is inexperienced.—Ghaner v. Leaphart Lumber Co., S. C., 67 S. E. 242.

77.——Injuries.—In an action for injury to plaintiff while working in defendant car company's yards by a pile of pig iron falling upon him, the burden was on plaintiff to show that the pile fell because of inherent defects therein which were known to defendant or should have been known to it by exercising ordinary care.—Bowman v. American Car & Foundry Co., Mo., 125 S. W. 1120.

78.——Inspection.—In an action for injuries from a defective printing press, evidence by defendant that he had it inspected daily by an expert did not conclusively show him free from negligence, since the jury might disbelieve him.—Oborn v. Nelson, Mo., 126 S. W. 178.

79.——Liability of Independent Contractor.—A manufacturing company, installing a machine for a railway company, furnishing employees for that purpose, held jointly liable with the railway company for negligence in the work whereby an employee was injured.—Fliege v. Kansas City Western Ry. Co., Kan., 107 Pac. 555.

80.——Safe Place to Work.—Where the master furnishes his servants a reasonably safe place to work, he is not liable for a transitory danger arising out of a single occurrence in which he is not at fault, and of which he has no notice or opportunity to correct.—Redmond v. Quincy, O. & K. C. R. Co., Mo., 126 S. W. 159.

81. **Mines and Minerals**—Location.—Plaintiff in an adverse suit cannot set up that a third person has made a subsequent location of the same property, where his suit is not based on such location.—Snowy Peak Mining Co. v. Tamarack & Chesapeake Mining Co., Idaho, 107 Pac. 60.

82. **Municipal Corporations**—Governmental Capacity.—Municipal corporations held not liable for misfeasance of their officers acting in a governmental capacity.—Edson v. City of Olathe, Kan., 107 Pac. 539.

83.——Individual Liability.—Officers of a city are not individually liable for the improper exercise of discretionary powers.—Browne v. City of Bentonville, Ark., 126 S. W. 93.

84.——Reasonableness of Ordinance.—On a trial for violating a municipal ordinance, the question of the unreasonableness of the ordinance is not raised without a pleading or proof that it is.—City of St. Louis v. Warren Commission & Investment Co., Mo., 126 S. W. 166.

85.——Reasonable Use of Sidewalk.—Defendants as implement merchants in a city were entitled to the reasonable use of the street and sidewalk to get merchandise in and out of their business place, subject to a proper regulatory ordinance.—McKee v. Peters, Mo., 126 S. W. 255.

86.——Void Ordinances.—A city ordinance passed on a date when the council had no power to sit held void.—City of Glasgow v. Morrison-Fuller, Mo., 126 S. W. 236.

87. **Negligence**—Inference.—Where the evidence permits an inference of negligence, and also as an inference of a cause which is not negligence, no case is made.—Quisenberry v. Metropolitan St. Ry. Co., Mo., 126 S. W. 182.

88.——Primary Negligence.—One guilty of primary negligence held not relieved from liability by unforeseen concurrent cause.—Watson v. Kentucky & Indiana Bridge & R. Co., Ky., 126 S. W. 146.

89.——Proximate Cause.—Where gas was

generated in a street from gasoline running from a derailed tank car, and it exploded when a person struck a match, held, that if his act was merely inadvertent or negligent, the railroad company's negligence was the proximate cause, but if his act was malicious, that was the proximate cause.—Watson v. Kentucky & Indiana Bridge & R. Co., Ky., 126 S. W. 146.

90.——Wanton Injury.—A complaint charging wantonness is not answered by a plea of contributory negligence.—Birmingham Ry., Light & Power Co. v. Selhorst, Ala., 51 So. 568.

91. **Parent and Child**—Father's Suit for Child's Injury.—Where a railroad conductor, with knowledge that plaintiff's son was under age, permitted him to work on the train as a brakeman without the father's consent, and he was injured, the father was entitled to recover for nursing, medical attention, and loss of service.—Hendrickson v. Louisville & N. Ry. Co., Ky., 126 S. W. 117.

92. **Partition**—Improvements.—Right to partition in kind cannot be defeated by one of the co-owners putting improvements on some of the lots at his own expense and for his own benefit.—Timberlake v. Sorrell, La., 51 So. 586.

93. **Payment**—To Payee After Transfer.—Payment of a note by the maker to the payee after transfer to plaintiff held to have discharged the maker's liability thereon.—Diamond Distilleries Co. v. Gott, Ky., 126 S. W. 131.

94. **Pledges**—Authority to Sue.—An agreement that a pledged account should be sued in the pledgor's name, if suit were necessary, held not to show the pledgor's authority to sue, as against the defendant.—Selleck v. Manhattan Fire Alarm Co., 121 N. Y. Supp. 587.

95. **Principal and Agent**—Liability of Agent.—An agent may become liable on a contract contrary to his actual intent and if he contracts in such form or under such circumstances as to make himself personally responsible he cannot afterwards, whether his principal was or was not known at the time, relieve himself of responsibility.—Leterman v. Charlottesville Lumber Co., Va., 67 S. E. 281.

96.——Ratification.—The presumption of ratification will arise on slight evidence when the act is plainly for the benefit of the principal.—Davis v. Nueces Valley Irr. Co., Tex., 126 S. W. 4.

97. **Principal and Surety**—Usury.—In action on note, where surety defends on ground of usury, evidence of his knowledge of the usury when he signed the note held admissible.—Jones v. Pope, Ga., 67 S. E. 280.

98. **Railroads**—Adverse Possession.—That there may be adverse possession of part of a railroad's right of way by the owner of the fee, held, the company must have notice other than from erection of an inclosure.—Atlantic Coast Line R. Co. v. Epperson, S. C., 67 S. E. 235.

99.——Damages for Killing Animal.—In an action for killing a mule, plaintiff held entitled to recover its value, expenses incurred in caring for it, and loss of its services during its illness.—Jones v. Texas & P. Ry. Co., La., 51 So. 582.

100.——Exceeding Speed Limit.—It is negligence for a railroad company to operate its train at a rate of speed forbidden by law.—Illinois Cent. R. Co. v. Sumrall, Miss., 51 So. 545.

101.——Recovery for Noise.—The right of an owner of property abutting on a street to recover for damages caused by the operation of trains on the street held not to depend on a defective construction of the road over the street, or negligent operation of the trains.—Trinity & B. V. Ry. Co. v. Jobe, Tex., 126 S. W. 32.

102.——Sparks.—A railroad company is not liable for damages done by sparks from its engines, where the latter are equipped with the most effective spark arresters in general use, unless there is negligence in the management of the engines.—Cincinnati, N. O. & T. P. Ry. Co. v. Sadieville Milling Co., Ky., 126 S. W. 118.

103. **Replevin**—Undivided Interest.—Replevin will not lie for an undivided interest in personal property.—McDonald v. Bailey, Okl., 107 Pac. 523.

104. **Sales**—Delivery.—Where a contract for the sale of lumber divided the lumber into a number of separate orders, but did not specify when the order should be given for delivery, it contemplated that the shipments should be ordered within a reasonable time.—Ogburn-Dalchau Lumber Co. v. Taylor, Tex., 126 S. W. 48.

105.——Replevin.—Where goods are sold, the title being retained in the seller, and the buyer defaults, the seller may recover the property in replevin.—Mizell Live Stock Co. v. J. J. McCaskill Co., Fla., 51 So. 547.

106. **Set-Off and Counterclaim**—Unliquidated Damages.—When the demands of both parties spring out of the same contract, defendant may assert a claim for unliquidated damages under his common law right of recoupment, or under Code 1904, sec. 3299.—Leterman v. Charlottesville Lumber Co., Va., 67 S. E. 281.

107. **Street Railroads**—Children on Street.—A street railroad company is required to exercise a much higher degree of care to refrain from injuring children on the streets than it owes to adults.—Childress v. Southwest Missouri R. Co., Mo., 126 S. W. 169.

108. **Taxation**—Recovery of Illegal Taxes.—Illegal taxes voluntarily paid cannot be recovered by the taxpayers.—Tillamook City v. County Court of Tillamook County, Oreg., 107 Pac. 482.

109. **Telegraphs and Telephones**—Conflict of Laws.—A contract for the transmission and delivery of a message is, as to its nature, obligation, and validity, governed by the law of the place of performance.—Western Union Telegraph Co. v. Fuel, Ala., 51 So. 571.

110.——Conflict of Laws.—Where the contract for a telegram and the negligence occurred in states where no damages for mental anguish were recoverable, plaintiff could not recover such damages in Arkansas.—Western Union Telegraph Co. v. See, Ark., 126 S. W. 78.

111. **Vendor and Purchaser**—Liability of Vendor.—A vendor, in case no warranty is stipulated in a deed of sale, on its being held void, is liable for the restitution of the price, but is not liable for the fee of the attorney for defending the suit and calling him in warranty.—Germillion v. Roy, La., 51 So. 576.

112.——Misrepresentation.—A vendee is entitled to rely on representations of his vendor, where the property is at a distance, or where for any other reason the falsity of the representation is not readily ascertainable.—Lindsay v. Davidson, Wash., 107 Pac. 514.

113.——Notice of Easement.—Where at the time a purchaser acquired land she had notice of a public easement in the land, she was charged with knowledge of the inconvenience resulting from it.—Burke v. Trabue's Ex'x, Ky., 126 S. W. 125.

114.——Tax Sales.—A purchaser of land from heirs of one who held it as agent pending suit by the principal's heirs for possession held to take no better title than his vendors had and not to be an innocent purchaser under the recording act.—Hudson v. Herman, Kan., 107 Pac. 35.

115. **Wills**—Undue Influence.—Undue influence may be exerted on testator, so as to render his will invalid, either by fraudulent means or device, or by physical or moral coercion practiced on him without any continual deception.—Whitcomb v. Whitcomb, Mass., 91 N. E. 210.